

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

AMAZON.COM SERVICES, LLC)	
)	
)	
Employer,)	
)	
and)	Case No. 10-RC-269250
)	
RETAIL, WHOLESALE AND)	
DEPARTMENT STORE UNION)	
)	
)	
Petitioner.)	
)	

**MOTION TO POSTPONE THE HEARING AND
EXTEND TIME FOR FILING OF STATEMENT OF POSITION**

I. INTRODUCTION

Pursuant to Section 102.63(a)(1) and (b)(1) of the National Labor Relations Board’s (“NLRB’s” or “Board’s”) Rules and Regulations, the Employer, Amazon.com Services, LLC (“Amazon”) moves to postpone both the date of the hearing and the time for filing and serving the Statement of Position related to the petition in this case (“Petition”).

The Board’s initial Order set Amazon’s deadline to submit its Statement of Position for noon on Thursday, December 3, 2020 and the pre-election hearing for Friday, December 11, 2020. The Region should extend both these deadlines. Three separate and independent reasons support this Motion:

- The Petitioner has failed to present an adequate showing of interest. The Region should complete the investigation of this preclusive issue first because that failure should completely determine whether Amazon must assemble any kind of response.
- Given the size of the petitioned-for bargaining unit, Amazon requires significantly more time to fully and fairly investigate and marshal the facts.

- Amazon will face significant delays in its investigation and marshalling of the facts necessary to respond to the Petition. The immediate post-petition period encompassing all of Thanksgiving, “Black Friday,” and “Cyber Monday” is the busiest time of the year for Amazon, and this is a year where more consumers than ever are shopping online and expecting prompt and accurate deliveries. COVID-19 has only made this time period more challenging. Since the onset of the pandemic, Amazon has made more than 150 process changes, from enhanced cleaning and social distancing measures, to changing onboarding protocols and increasing safety training, all of which takes additional time and re-deployment of human resources to ensure maintenance of the highest standards of health and safety due to the global pandemic.

As discussed further below, Amazon respectfully requests that the Region postpone the pre-election hearing until January 11, 2021, or at least until significantly after December 25, 2020. For the same reasons, Amazon requests that the Region extend the deadline for filing and serving the Statement of Position by three business days, until noon on Tuesday, December 8, 2020 (with a corresponding extension granted to Petitioner for its Responsive Statement of Position).

The undersigned counsel contacted counsel for the Petitioner, the Retail, Wholesale and Department Store Union (“RWDSU” or “Petitioner”) via both telephone and email this morning at approximately 10:30 A.M. Eastern time about this request, including the length of the requested extensions and then, after all counsel conferred, on the basic rationale for same. Counsel for Petitioner is conferring with Petitioner on Petitioner’s position on this motion as of the time of this filing.

II. THE REGION SHOULD GRANT AMAZON’S POSTPONEMENT REQUEST.

A. The Petitioner’s Insufficient Showing of Interest Should Moot the Need for Further Proceedings, and a Postponement Would Save Amazon, the Region, and Petitioner from Expending Needless Time and Resources in the Interim.

As a threshold matter, the pending challenge to the Petitioner’s showing of interest warrants postponement of these deadlines. Specifically, Amazon has provided information to the Region that the proposed bargaining unit exceeds that represented in the Petition by approximately 3.75 times. Indeed, even if the entire 1500-employee unit enumerated in the Petition submitted authorization cards on behalf of Petitioner, Petitioner would still fail to show a sufficiency of interest. A high probability exists that the showing of interest is deficient.

Should the Region confirm such inadequacy of interest, it should immediately dispose of the Petition. Indeed, the Board’s Casehandling Manual (“CHM”) provides for a rapid investigation “in order that issues concerning the showing of interest will be resolved before the case progresses beyond the initial stages.” *See* NLRB CHM Part II § 11020 (“Showing of Interest: Purpose”). Determining an insufficiency of interest would moot altogether the need for both filing the Statement of Position and the hearing, as the Manual makes clear:

The purpose of the demonstration of an adequate showing of interest on the part of labor organizations . . . is to determine whether the conduct of an election serves a useful purpose under the statute, i.e., whether there is sufficient employee interest to warrant the expenditure of the Agency’s time, effort and resources in conducting an election. This requirement prevents parties with little or no stake in a bargaining unit from abusing the Agency’s machinery and interfering with the normal administration of the Act and reasonably assures that a genuine representation question exists.

Id. The Region would then dismiss the Petition, absent withdrawal.

Applying these guidelines, the Region should not force the parties to expend considerable time and resources before the Region has had an opportunity to fully consider and rule on Amazon’s requested review of the Petitioner’s showing of interest. A postponement would

allow the Region time to “reasonably assure[] that a genuine representation question exists” and prevent any interference with the normal administration of the Act, as contemplated by the Manual.

B. The Sheer Size of the Proposed Bargaining Unit Justifies Postponement.

The size of the proposed bargaining unit further justifies postponement of these deadlines. By Amazon’s count, the Petitioner seeks to represent approximately 5,723 employees, a greater number than most petitions. In contrast, from January 1, 2019 to date, fewer than 0.5% of RC petitions filed with the Board involved 1,000 or more employees, and *none* involved more than 2,500 employees.¹ In those RC cases where the Region held an election, the average number of employees eligible to vote ranged from 61 to 62 in fiscal years 2019 and 2020. *See* Election Report for Cases Closed (2019), <https://www.nlr.gov/sites/default/files/attachments/pages/node-296/fy-2019-totals.pdf> and Election Report for Cases Closed (2020), <https://www.nlr.gov/sites/default/files/attachments/pages/node-3617/total-closed-cases-fy-2020-pdf.pdf>. The most recent RC case identified with an election of similar size was the Disneyland election (5,757 voters) where the union filed its petition in September 2013 and the pre-election hearing ultimately occurred *in May 2014*. *See Disneyland*, Case 21-RC-112556 (filed on September 4, 2013; RD Order to Reschedule Hearing on May 27, 2014; post-hearing briefs submitted on May 27, 2014).

Concerning unit inclusions and exclusions, Amazon expects to raise in its Statement of Position – and potentially at a hearing – several litigable issues related to the appropriateness of the petitioned-for unit, including issues related to “seasonal employees.” Understanding and

¹ These calculations are based on information obtained through the Board’s “R case reports” database. *See* <https://www.nlr.gov/advanced-search>.

preparing to litigate these issues will involve collecting substantial evidence and engaging in complex and fact-intensive multi-factor analyses, which necessarily will take additional time to accomplish. On top of that, the process changes and additional safety protocols necessitated by COVID-19 (see below) in the context of Amazon's busiest season will interfere with completion of this investigation on an accelerated basis. Thus, failing to postpone these dates will cause prejudice to Amazon's counsel in marshalling, analyzing, and, if necessary, litigating the facts needed for determination of the issues.

Postponing these deadlines will help better serve the Board's pre-election investigatory and hearing process and allow the Board to make a fully informed decision as to the appropriateness of the proposed unit.

C. The Current Consumer and Business Demands Imposed by Amazon's Peak Season Require the Full Attention of Potential Witnesses, and Hearing Preparation Will Cause a Significant and Costly Disruption.

Moreover, absent postponement, Amazon's peak season will render its counsel simply unable to gather the information needed to file an accurate Statement of Position and adequately prepare for a potential hearing. Amazon is now in the midst of its "peak" season (known as "Peak"), which runs from the week before Black Friday (November 27) through a few days after Christmas Eve (December 24, 2020). Declaration of (b) (6), (b) (7)(C) ("Declaration") ¶ 4.²

² (b) (6), (b) (7)(C) Declaration is attached as Exhibit 1.

The fact that Amazon's Peak season is "busy" is as well-documented as it is an understatement.³ During Peak, Amazon's fulfillment centers – including the Bessemer, Alabama fulfillment center that is the subject of this petition ("BHM1") – are fully staffed and operating at maximum capacity. *Id.* BHM1's managers and supervisors are incredibly engaged during this time. *Id.*⁴ During Peak, BHM1 will ship approximately 30% more packages per day compared to the rest of the year. *Id.* This could be even higher this year in what will likely be a historical Peak. *Id.*

³ Brian Deagon, *Amazon Claims Record Holiday Shopping Sales Period*, Investor's Business Daily (Dec. 26, 2019) ("Amazon holiday sales brought in a record number of shoppers during the holiday season, with 'billions of items ordered worldwide' from its site, the company said Thursday."), <https://www.investors.com/news/technology/amazon-holiday-sales-shopping-sets-record/>; *How Lessons From the Record-Breaking 2018 Holiday Season Can Inform Retailers' 2019 Strategy*, McKinsey & Co. (July 29, 2019) (noting that "Amazon had five times the traffic on Cyber Monday as other leading retailers" and, "[o]ver the next four weeks, Amazon's traffic surged even higher, and its conversion rate stayed at this same elevated level, whereas other retailers saw their average December traffic and conversion rates drop off once the extravagance of Black Friday and Cyber Monday was over"), <https://www.mckinsey.com/business-functions/marketing-and-sales/our-insights/how-lessons-from-the-record-breaking-2018-holiday-season-can-inform-retailers-2019-strategy>; Shannon Liao, *Amazon's Holiday Profits Soared Thanks to Black Friday and Cyber Monday*, The Verge (Jan. 31, 2019) ("For Amazon, 2018 was a year of immense growth, and the tech giant capped it off with huge sales from Black Friday, Cyber Monday, and general holiday promotions that lasted through December."), <https://www.theverge.com/2019/1/31/18205671/amazon-q4-2018-earnings-profits-holidays-black-friday-cyber-monday>.

⁴ Sebastian Herrera, *A Day in the Life of an Amazon Warehouse Worker*, Wall Street Journal (Nov. 23, 2020) ("Deborah Liljegren joined Amazon.com Inc. . . . in April as it raced to add warehouse workers to keep up with soaring demand from homebound shoppers. Seven months later, her days are only getting busier. 'The peak season has started,' Ms. Liljegren, 49 years old, said of the holidays...."), <https://www.wsj.com/articles/a-day-in-the-life-of-an-amazon-warehouse-worker-11606127400?mg=prod/com-wsj>; Amy DiPierro, *Inside an Amazon Warehouse in the Final Days Before Christmas*, Desert Sun (Dec. 21, 2019) ("Inside, one Moreno Valley worker said during her first year on the job, in 2014, she typically worked 50 to 60 hours a week during the company's peak season. Now she's part of the Amazon group that organizes games and awards prizes, like coffeemakers and stand-up mixers, to workers with perfect attendance during peak. 'It is nice knowing that people get their gifts in time because we work so hard,' she said."), <https://www.desertsun.com/story/money/2018/12/21/inside-amazon-warehouse-last-twelve-days-until-christmas/2291145002/>; *An Inside Look at Cyber Monday Madness at an Amazon Warehouse in Rialto*, CBS Los Angeles (Dec. 2, 2019) ("Cyber Monday is Amazon's Super Bowl. Amazon estimates that more than one million packages will be mailed out today alone from its Rialto center. Amazon customers ordered a staggering 180 million items between Thanksgiving and Cyber Monday in 2018."), <https://losangeles.cbslocal.com/2019/12/02/an-inside-look-at-cyber-monday-madness-at-an-amazon-warehouse-in-rialto/>.

To meet demand, BHM1 managers and supervisors are fully engaged in operations of the facility and exceptionally busy. *Id.* ¶ 6. Most managers and supervisors currently are working 5 days and a minimum of 55 hours per week, and some are expecting to work between 70 and 80 hours a week between now and the end of Peak. *Id.* ¶¶ 7–8. There also is a vacation blackout through December 24, meaning that managers cannot schedule time off until Peak ends on December 25. *Id.* ¶ 9. Managers and supervisors customarily avail themselves of vacation right after December 25, as well as the first week of January, and the week after Christmas is one of the hardest weeks to operate a fulfillment center like BHM1 because of the number of managers, supervisors, and hourly associates who will take time off. *Id.*

Managers and supervisors also are performing additional job duties to assist employees in order to meet demand, such as assisting with cleanup to get BHM1 ready each day and passing out thank you incentives and prizes to employees as a reward for their efforts. *Id.* ¶ 10. Managers also are helping to train and onboard new seasonal associates within new protocols due to COVID-19, performing Peak-specific audits, working with Amazon’s Problem Solving Team to mitigate disruptions, and performing extra work to reduce backlogs when hourly associates take their breaks. *Id.* These responsibilities will fully occupy key witnesses and contacts.

In addition, in response to the COVID-19 pandemic, Amazon has implemented 150 enhanced cleaning procedures and protocols at all of its fulfillment centers, including BHM1.⁵ *Id.* ¶ 11. Managers regularly check with associates to ensure that they have the necessary supplies to clean their stations, are wearing their masks properly at all times, and are adhering to

⁵ See <https://www.aboutamazon.com/news/operations/every-day-is-day-one-for-health-and-safety-training> and <https://www.aboutamazon.com/news/company-news/how-were-taking-care-of-employees-during-covid-19>.

applicable social distancing requirements. *Id.* Managers are also regularly distributing masks, and making available handwashing stations, sanitizing spray and wipes, and other personal protective equipment. *Id.* Amazon's commitment to safety also has required managers to change how they communicate with associates. *Id.* For example, prior to the pandemic, managers communicated important messages to associates during group stand up meetings because they were efficient but now cannot do so due to COVID-19 safety protocols. *Id.* Now, as an example, managers are communicating with associates through several alternative means, with one being through individual, face-to-face meetings, *id.*, which obviously takes significantly more time, especially given the size of BHM1 (855,000 square feet) and the number of employees working at the site. The COVID-19 protocols also require managers and additional personnel dispatched into safety ambassadors to spend additional time coordinating associates' break and lunch schedules, both to ensure that associates remain safe when they are taking their breaks and to avoid gridlocking operations. *Id.* All of this adds another layer of complexity to maintaining operations during Peak. *Id.*

Like other online retailers,⁶ Amazon anticipates Peak to be particularly busy this year due to increased demand driven largely by the COVID-19 pandemic and consumer reluctance to

⁶ Tamara Charm et al., *The Great Consumer Shift: Ten Charts That Show How US Shopping Behavior Is Changing*, McKinsey & Company (Aug. 4, 2020) ("Consumer intent to shop online continues to increase, especially in essentials and home-entertainment categories. More interestingly, these habits seem like they're going to stick as US consumers report an intent to shop online even after the COVID-19 crisis."), <https://www.mckinsey.com/business-functions/marketing-and-sales/our-insights/the-great-consumer-shift-ten-charts-that-show-how-us-shopping-behavior-is-changing>; Blake Morgan, *More Customers Are Shopping Online Now Than at Height of Pandemic, Fueling Need for Digital Transformation*, Forbes (July 27, 2020) ("Consumers around the country have been sheltering in place for months and taking most of their shopping online—and the trend isn't going anywhere. In fact, more consumers have shopped online since physical stores started re-opening than did when stores were still closed. . . . And those numbers are likely to stay steady or increase before they start to go down. The same survey found that the average consumer doesn't expect the pandemic to end until February 2021, meaning that retailers have at least eight months of increased online orders."), <https://www.forbes.com/sites/blakemorgan/2020/07/27/more-customers-are-shopping-online-now-than-at-height-of-pandemic-fueling-need-for-digital-transformation>.

utilize traditional brick and mortar retailers.⁷ *Id.* ¶ 12. Now, more than at any other time during the year, managers and supervisors are critical to maintaining the continuity of BHM1’s operations. *Id.* ¶ 13. Removing managers and supervisors from their posts for any period for document review/explanation, interviews, or witness preparation would be extremely disruptive, hinder the fulfillment center’s ability to meet the demands of Peak, and cause the fulfillment center significant operational harm. *Id.* The two weeks after Peak are little better, because many managers and supervisors customarily then take vacation. *Id.* ¶ 9.

⁷ James Coker, *Amazon Sales Surge as It Prepares for Busy Holiday Season*, Essential Retail (Oct. 30, 2020) (“[Amazon] revealed it is already seeing signs that an unprecedented number of customers will be shopping online during the busy fourth quarter, which includes Black Friday and the Christmas period.”), <https://www.essentialretail.com/news/amazon-sales-surge-busy-holiday>; Jeremy C. Owens, *Amazon Has Already Had Its Most Profitable Year Ever, and Just Set a Record for Sales in a Quarter*, MarketWatch (Oct. 29, 2020) (“Amazon has experienced a surge in usage amid the COVID-19 pandemic, as Americans and others worldwide facing shelter-in-place orders due to the spread of the coronavirus order essentials online. The company has expanded rapidly to address the needs, pushing its workforce to more than 1 million people.”), <https://www.marketwatch.com/story/amazon-has-already-had-its-most-profitable-year-ever-and-the-holidays-are-still-on-the-way-11604002512>; Dave Sebastian, *Amazon to Add 100,000 Jobs for Coming Holiday Season*, Wall Street Journal (Oct. 28, 2020) (“The e-commerce giant on Tuesday said the seasonal workers would pack and deliver items, among other roles, during the holiday shopping rush. The additions build on the company’s hiring spree this year to meet soaring demand during the coronavirus pandemic, even as companies across a range of industries have cut their workforces and filed for bankruptcy.”), <https://www.wsj.com/articles/amazon-to-hire-100-000-seasonal-workers-for-holidays-11603809426#:~:text=Last%20month%2C%20the%20company%20said,technology%20jobs%20it%20is%20adding>; Alexis Benveniste, *Amazon Plans to Add 100,000 Seasonal Workers in Holiday Hiring Blitz*, CNN Business (Oct. 27, 2020) (“In preparation for holiday shopping, Amazon is adding 100,000 seasonal jobs.”), <https://www.cnn.com/2020/10/27/tech/amazon-seasonal-job-hiring/index.html>; Sebastian Herrera, *Amazon’s Prime Day Accelerates Shift to Online Shopping*, Wall Street Journal Online (Oct. 16, 2020) (“Amazon is leading a pack of major retailers in showing how online spending will play a greater role than ever these holidays”), <https://www.wsj.com/articles/amazons-prime-day-accelerates-shift-to-online-shopping-11602846014?mg=prod/com-wsj>; Annie Palmer, *Amazon Restricts Warehouse Storage as Covid-19 Crisis Continues and Holidays Loom*, CNBC (July 13, 2020) (noting that new inventory restrictions at its warehouses “show how Amazon is preparing for this year’s holiday shopping season, which is likely to be more challenging than before given the Covid-19 pandemic”), <https://www.cnbc.com/2020/07/13/amazon-restricts-warehouse-storage-to-prepare-for-holiday-rush.html>. This has been described as a “permanent shift” to e-commerce. See Michael Corkery and Sapna Maheshwari, *As Customers Move Online, So Does the Holiday Shopping Season*, N.Y. Times (Nov. 23, 2020) (“Last week, Walmart, the nation’s largest retailer, reported that e-commerce sales increased 79 percent in the third quarter, while its rival Target said its e-commerce business was up 155 percent. Amazon’s sales increased 37 percent. . . . Retail executives said that staggering growth was not a fluke of the pandemic lockdowns, but the result of a permanent shift in how people shop.”), <https://www.nytimes.com/2020/11/23/business/retailers-ecommerce-black-friday.html>.

Given these constraints – along with the logistical challenges presented by the COVID-19 pandemic – good cause exists to grant Amazon’s request to postpone the Statement of Position deadline and the hearing date. These logistical challenges will interfere with Amazon’s counsel opportunity to meet with the individuals who can provide the information necessary to prepare the Statement of Position and identify any issues relating to the appropriateness of the proposed unit. Amazon’s counsel also will confront challenges with preparing and presenting potential witnesses to testify at a possible hearing. In addition to the extraordinary number of hours that all of Amazon’s employees are dedicating to ensure continuity of operations during Peak,⁸ the COVID-19 pandemic also necessitates meeting with potential witnesses remotely, which may hinder and/or cause further delay in Amazon’s ability to prepare for the hearing.

Furthermore, the size of the bargaining unit and the issues that Amazon plans to raise in response to the Petition will require the collection of a significant number of documents. It will take time to identify, collect, copy, transmit, and analyze these documents for purposes of completing the Statement of Position, as well as to prepare these documents for a potential hearing.

III. CONCLUSION

For these reasons, the Employer respectfully requests that the Region postpone the pre-election hearing until on or after January 11, 2021, or, in the alternative, significantly after December 25, 2020, and postpone the deadline for filing and serving the Statement of Position

⁸ Amazon’s employees are considered “essential” under federal guidelines. *See* Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response (Version 4.0), CISA, at 22 (Aug. 18, 2020) (“Workers supporting ecommerce of essential goods through distribution, warehouse, call center facilities, and other essential operational support functions, that accept, store, and process goods, and that facilitate their transportation and delivery.”), https://www.cisa.gov/sites/default/files/publications/Version_4.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_FINAL%20AUG%2018v3.pdf.

until noon on December 8, 2020 (with a corresponding extension granted to Petitioner for its Responsive Statement of Position).

Dated: November 30, 2020

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Employer's Motion to Postpone the Hearing and Extend Time for Filing of Statement of Position was filed today, November 30, 2020, using the NLRB's e-Filing system and was served by email upon the following:

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